

APR 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LUIS FABELO,

Plaintiff - Appellant,

v.

V. ANDREWS; et al.,

Defendants - Appellees.

No. 06-35809

D.C. No. CV-05-00228-ST

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted April 13, 2009^{**}

Before: GRABER, GOULD, and BEA, Circuit Judges.

Luis Fabelo, an Oregon state prisoner, appeals pro se from the district court's judgment dismissing without prejudice his 42 U.S.C. § 1983 action for

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court properly dismissed the action because Fabelo did not complete the prison grievance process prior to filing suit. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that “proper exhaustion” under § 1997e(a) requires adherence to administrative procedural rules). Contrary to Fabelo’s contentions, the record shows that he had fair notice of the opportunity to file responsive pleadings to defendants’ motion to dismiss, and filed a responsive pleading with exhibits.

We do not consider Fabelo’s contention that a prison official allegedly stated there were no further available administrative remedies because the argument is raised for the first time on appeal. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (explaining that, as a general rule, the court will not consider arguments that are raised for the first time on appeal).

Fabelo’s remaining contentions are unpersuasive.

AFFIRMED.